IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

WP(C).No. 28187 of 2006(E)

AGAINST THE ORDER IN EP 66/2004 IN
OS.33/2002 of SUB COURT,THODUPUZHA

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PETITIONER:

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1. K.B. REJIMON, S/O.BHASKARAN.

2. K.B. DEVARAJAN, S/O.BHASKARAN.
BOTH ARE RESIDING AT KADAMBU KANDATHIL HOUSE,
D.V. SALA, POTTANKKADU P.O., DEVIKULAM TALUK,
IDUKKI.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS
SRI.SUNIL J.CHAKKALACKAL

RESPONDENTS:

THE FEDERAL BANK LIMITED,
REPRESENTED BY ITS MANAGER,
KUNJITHANNI BRANCH, IDUKKI DISTRICT.

BY ADV. SRI.A.ANTONY
SMT.LEELAMMA ANTONY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Ext.P1 True copy of E.P.No.66/04 in O.S.No.33/02 dated 31/8/2004 of Sub Court, Thodupuzha.

Ext.P2 True copy of the objection dated 17.3.2005.

Ext.P3 True copy of the order dated 24.2.2006.

Ext.P4 True copy of the order dated 9.6.2006.

Ext.P5 True copy of the order dated 22.9.2006.

M.Sasidharan Nambiar, J.

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W.P.(C)No.28187 of 2006

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Dated this the 21st day of November, 2006.

JUDGMENT

This petition is filed under Article 227 of the Constitution of India challenging the order of executing Court with regard to proclamation of sale of the mortgaged property.

2. On hearing learned counsel appearing for the petitioners and respondent-decree holder and going through Ext.P3 order, it is clear that executing Court has not complied with the mandatory provisions of the Second Proviso to Sub-rule (2) of Rule 66 of Order XXI of the Code of Civil Procedure. When the judgment debtors specifically claimed a value for the property much higher than the value shown by the decree holder in the draft sale papers, second Proviso to Sub-rule (2) of Rule 66, Order XXI of the Code of Civil Procedure mandates that it is not for the executing

Court to enter a finding on the value of the property and need only incorporate the value claimed by both decree holder and judgment debtor.

3. Learned counsel appearing for petitioners submitted that the judgment debtors are prepared to pay the decree amount, but they need some time for payment. Learned counsel appearing for the respondent-decree holder submitted that if judgment debtors are prepared to pay the decree amount, they have no objection for granting reasonable time.

4. In such circumstances, the order of the Executing Court for proclamation of sale is set aside. The Executing Court is directed to pass fresh orders in accordance with the Second Proviso to Sub-rule (2) of Rule 66 of Order XXI of the Code of Civil Procedure, incorporating the value claimed by the judgment debtors also. If the judgment debtors pay 40% of the decree amount on or before 15.3.2007, executing Court shall adjourn the sale for six months. Petitioners are also at liberty to approach the respondent-decree holder for one time settlement of the decree amount. If petitioners failed to deposit 40% of the amount as

directed on or before 15.3.2007, the Executing Court has to proceed with the sale directing proclamation of sale in accordance with the Second Proviso to Sub-rule (2) of Rule 66 of Order XXI of the Code of Civil Procedure.

Writ Petition is disposed of.

M.Sasidharan Nambiar,
Judge.

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M.Sasidharan Nambiar, J.

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W.P.(C)No.28187 of 2006

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JUDGMENT

21st November, 2006.